

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PARSE BIOSCIENCES, INC.,

Plaintiff,

V.

JAY SHENDURE and BRUCE COLSTON
TRAPNELL, JR.,

Defendants.

NO. 2:24-mc-00065-JK

Underlying action pending in the
United States District Court for the
District of Delaware, Case No. 1:22-cv-
01597-CBJ

**DECLARATION OF R. WILSON
POWERS III, PH.D. IN SUPPORT
OF PARSE'S MOTION TO
COMPEL COMPLIANCE WITH
ATTORNEY-ISSUED SUBPOENAS**

I, R. Wilson Powers III, Ph.D., declare as follows:

1. I am an attorney duly admitted to practice in California and the District of Columbia.

I am a Director with the law firm of Sterne, Kessler, Goldstein & Fox P.L.L.C., which has been retained as outside counsel by Parse Biosciences, Inc. (“Parse”) and the University of Washington (“UW”) to represent them in a lawsuit pending in the United States District Court for the District of Delaware, *Scale Biosciences, Inc. & Roche Sequencing Solutions, Inc. v. Parse Biosciences, Inc. & University of Washington*, Case No. 1:22-cv-01597-CBJ (the “underlying action”). I have been admitted *pro hac vice* in the underlying action in Delaware.

2. I make this declaration in support of Parse's Motion to Compel Compliance With Attorney-Issued Subpoenas, issued on May 30, 2024 (the "Subpoenas"). Except as otherwise stated, I have personal knowledge of the facts set forth herein and if called upon, I could and would testify to the following facts.

1 3. Attached as **Exhibit 1** is a true and correct copy of Parse's Subpoena and Notice
 2 Package to Dr. Jay Shendure dated May 30, 2024 ("the Shendure Subpoena Package"), issued in the
 3 underlying action.

4 4. Attached as **Exhibits 2a and 2b** are a true and correct copies of the Proofs of Service
 5 dated May 30, 2024, confirming that Dr. Shendure was personally served a complete copy of the
 6 Shendure Subpoena Package, including a witness fee check in the amount of \$49.38, on May 30,
 7 2024.

8 5. Attached as **Exhibit 3** is a true and correct copy of Parse's Subpoena and Notice
 9 Package to Dr. Bruce Colston Trapnell dated May 30, 2024 ("the Trapnell Subpoena Package"),
 10 issued in the underlying action.

11 6. Attached as **Exhibits 4a and 4b** are a true and correct copies of the Proofs of Service
 12 dated May 31, 2024, confirming that Dr. Trapnell was personally served a complete copy of the
 13 Trapnell Subpoena Package, including a witness fee check in the amount of \$49.38, on May 31,
 14 2024.

15 7. The underlying action is a patent infringement lawsuit. In this case, Scale
 16 Biosciences, Inc. ("ScaleBio") and Roche Sequencing Solution ("Roche") have accused Parse of
 17 infringing four patents, and Parse and UW have accused Scale of infringing three patents. In the
 18 underlying action, Parse and UW have identified multiple ScaleBio products as accused products.

19 8. The accompanying motion to compel arises out of Parse's efforts to obtain discovery
 20 relevant to issues of infringement, validity, and damages from Dr. Shendure and Dr. Trapnell.
 21 Dr. Shendure and Dr. Trapnell are co-founders of ScaleBio and continue to serve ScaleBio as
 22 scientific advisors. And, related to the technology at issue in the underlying lawsuit, Dr. Shendure
 23 and Dr. Trapnell are listed as inventors on relevant patents and patent applications and authored a
 24 relevant scientific article.

25 9. As explained below, there is no dispute that Dr. Shendure's and Dr. Trapnell's
 26 documents and communications are relevant to claims or defenses in the underlying action and
 27 proportional to the needs thereof. Nor have Dr. Shendure and Dr. Trapnell stated that they will not

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1 comply with the Subpoenas based on an argument that the requested documents could be easily
 2 obtained through another source that is more convenient, less burdensome, or less expensive.

3 10. Indeed, through their counsel, Dr. Shendure and Dr. Trapnell have agreed to produce
 4 all documents responsive to their respective Subpoenas. Neither Dr. Shendure nor Dr. Trapnell has
 5 objected to the Subpoenas or the requests for documents contained therein. Neither has claimed that
 6 the Subpoenas are in any way defective; neither has claimed that service of the Subpoenas was
 7 improper; neither has claimed that compliance with the Subpoenas would impose an undue burden
 8 or expense; neither has sought to narrow the scope of any particular document request; and neither
 9 has threatened to move to quash or modify. Nor has any party in the underlying lawsuit moved to
 10 quash or modify the Subpoenas.

11 11. To date, however, Dr. Shendure and Dr. Trapnell have not produced a single
 12 document responsive to the Subpoenas. Dr. Shendure and Dr. Trapnell have not provided any
 13 explanation as to why they have not produced a single document.

14 12. Parse has taken or defended 19 fact depositions in the underlying action. Fact
 15 discovery closed in the underlying action on August 2, 2024. And opening expert reports in the
 16 underlying action are due on October 10, 2024.

17 13. Attached as **Exhibit 5**, **Exhibit 6**, and **Exhibit 7** are a true and correct copies of email
 18 correspondence between counsel for Parse and counsel for Dr. Shendure and Dr. Trapnell. This
 19 same correspondence is outlined below.

20 14. On June 11, 2024, I received an email from Parse's Delaware counsel in the
 21 underlying action forwarding an earlier email from Mitchell Epner, dated June 10, 2024,
 22 representing that his law firm, Kudman Trachten Aloe Posner LLP, had been retained as counsel to
 23 Dr. Shendure and Dr. Trapnell in regard to the subpoenas issued to them in the underlying action.
 24 See Exhibit 5.

25 15. My colleague Brady P. Gleason and I met and conferred telephonically with
 26 Mr. Epner, counsel for Dr. Shendure and Dr. Trapnell, on June 12, 2024, regarding the Subpoenas
 27 issued to them in the underlying action. During this telephonic conference, we discussed the



1 application of search terms for Dr. Shendure's and Dr. Trapnell's electronically stored information
 2 and agreed to adjourn the deadlines to respond to the Subpoenas to a date to be determined in the
 3 future. *See Exhibit 6.*

4 16. On June 19, 2024, Mr. Gleason emailed Mr. Epner a set of proposed search terms.
 5 *See Exhibit 7 at 17–18.*

6 17. On June 19, 2024, Mr. Epner responded with a proposed edit to certain search terms.
 7 *See id.* at 16–17. On June 20, 2024, my colleague David Wang, also from Sterne, Kessler, Goldstein
 8 & Fox P.L.L.C, confirmed that we agreed with Mr. Epner's proposed edit. *See id.* at 15–16.

9 18. On June 20, 2024, Mr. Epner responded to Mr. Wang's email regarding the
 10 negotiation of search terms, stating: "I will come back to you shortly with my specific comments."
 11 *See id.* at 15. Mr. Epner did not fulfil this promise, however.

12 19. On July 1, 2024, having heard no response from Mr. Epner, Mr. Gleason emailed
 13 Mr. Epner, stating: "Please confirm that the proposed search terms are satisfactory, and that your
 14 team has begun or will begin the process of collecting and producing documents responsive to the
 15 subpoenas served on Dr. Shendure and Dr. Trapnell." *See id.*

16 20. On July 1, 2024, in response to Mr. Gleason's email, Mr. Epner stated: "I will revert
 17 in the next few days." *See id.* at 14–15. Mr. Epner did not fulfil this promise, however.

18 21. On July 10, 2024, having heard no response from Mr. Epner, Mr. Gleason emailed
 19 Mr. Epner, stating: "It has been nearly three weeks since we shared our proposed search terms, and
 20 we have not received a response from you. Please confirm the status of your document collection
 21 and production in response to the Shendure and Trapnell subpoenas by COB today." *See id.* at 14.

22 22. On July 10, 2024, in response to Mr. Gleason's email, Mr. Epner stated: "I will be in
 23 a position to discuss" on July 12, 2024. *See id.*

24 23. On July 11, 2024, in response to Mr. Epner's email, Mr. Gleason proposed a meet
 25 and confer on July 15, 2024. *See id.* at 13–14.

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1 24. On July 19, 2024, having heard no response from Mr. Epner, Mr. Gleason emailed
 2 Mr. Epner, stating: “Please provide an update on the status of your collection and production of
 3 Dr. Shendure’s and Dr. Trapnell’s documents in writing by” July 22, 2024. *See id.* at 13.

4 25. On July 25, 2024, having heard no response from Mr. Epner, Mr. Gleason emailed
 5 Mr. Epner, stating: “Our last two emails to you have gone unanswered, and it have been well over
 6 a month since we provided you with a set of search terms for Dr. Trapnell’s and Dr. Shendure’s
 7 ESI. Please provide an update on the status of your collection and production of Dr. Shendure’s and
 8 Dr. Trapnell’s documents in writing by COB tomorrow. We are also available to meet and confer.
 9 If our emails continue to go unanswered, we will seek the appropriate relief from the court.” *See id.*
 10 at 12–13.

11 26. On July 26, 2024, in response to Mr. Gleason’s email, Mr. Epner stated: “I am out of
 12 office at a memorial service with limited wifi. I will respond on” July 27, 2024. *See id.* at 12.
 13 Mr. Epner did not fulfil this promise, however.

14 27. On July 31, 2024, having heard no response from Mr. Epner, Mr. Gleason emailed
 15 Mr. Epner, stating: “We have still not received any information from you regarding the status of
 16 your collection and production of Dr. Shendure’s and Dr. Trapnell’s documents. We have asked for
 17 this information for six weeks. And your email from Friday has become yet another unfulfilled
 18 promise by you to provide a prompt response. *See e.g.*, June 20 Email (offering to ‘come back to
 19 you shortly’); July 1 Email (promising ‘revert in the next few days’); and July 10 Email (‘be in a
 20 position to discuss Friday morning’). To make matters worse, each time you fail to meet your own
 21 deadline, we do not hear anything from you. This is now the sixth time we have asked for an update
 22 on the status of your collection and production of Dr. Shendure’s and Dr. Trapnell’s documents. We
 23 again request that you provide this update in writing by COB tomorrow.” *See id.* at 11–12.

24 28. On July 31, 2024, in response to Mr. Gleason’s email, Mr. Epner stated: “I am
 25 available for an update tomorrow. Please let me know a good time for you in the afternoon.” *See id.*
 26 at 11.



1 29. On July 31, 2024, in response to Mr. Epner's email, Mr. Gleason proposed a meet
 2 and confer for August 1, 2024 at 1:30 pm. *See id.* at 10–11.

3 30. On August 1, 2024, having heard no response from Mr. Epner, Mr. Gleason emailed
 4 Mr. Epner, stating: “[U]nless you provide an alternative time to meet and confer today or tomorrow,
 5 we will call your direct office line at 1:30 pm.” *See id.* at 10.

6 31. On August 1, 2024, in response to Mr. Gleason's email, Mr. Epner stated: “Let's
 7 meet and confer tomorrow at 10 am.” *See id.*

8 32. On August 1, 2024, I emailed Mr. Epner confirming that I would call his office line
 9 on August 2, 2024 at 10:00 am. *See id.* at 9–10.

10 33. On August 2, 2024, I met and conferred telephonically with Mr. Epner regarding the
 11 status of the collection and production of Dr. Shendure's and Dr. Trapnell's documents and
 12 communications. During this meet and confer, Mr. Epner stated that he had collected documents
 13 from Dr. Shendure and Dr. Trapnell and that he would apply to these documents the search terms
 14 that we proposed on June 19, 2024 and had agreed to on June 20, 2024. Mr. Epner also promised to
 15 provide an update on his progress the week of August 5, 2024. *See id.* at 9. Mr. Epner did not fulfil
 16 this promise, however.

17 34. On August 13, 2024, having heard no response from Mr. Epner, Mr. Gleason emailed
 18 Mr. Epner, stating: “Please provide an update on the status of your production of Dr. Shendure's
 19 and Dr. Trapnell's documents.” *See id.* at 8–9.

20 35. On August 16, 2024, having heard no response from Mr. Epner, Mr. Gleason emailed
 21 Mr. Epner, stating: “Our email from earlier this week has gone unanswered. And, yet again, you
 22 have reneged on a promise to provide a timely update. ... For now a seventh time, we ask that you
 23 provide an update on the status of your production of Dr. Shendure's and Dr. Trapnell's documents.
 24 Please do so no later than COB” on August 19, 2024. *See id.* at 8.

25 36. On August 22, 2024, having heard no response from Mr. Epner, Mr. Gleason emailed
 26 Mr. Epner, stating: “Our last two emails have gone unanswered. And, despite these subpoenas having
 27 been served months ago, we have yet to receive a substantive update from you. If you do not produce



1 all non-privileged documents responsive to the Shendure and Trapnell subpoenas by August 30th,
 2 we have no choice but to move to compel. If you cannot produce all non-privileged documents
 3 responsive to the Shendure and Trapnell subpoenas by August 30th, please provide your availability
 4 to meet and confer.” *See id.* at 7–8.

5 37. On August 22, 2024, in response to Mr. Gleason’s email, Mr. Epner stated: “Let us
 6 plan to meet and confer on 8/28. Please provide times.” *See id.* at 7.

7 38. On August 23, 2024, in response to Mr. Epner’s email, Mr. Gleason stated: “We are
 8 available between 1:00 and 4:00 pm on August 28th. In order to make this meet and confer is
 9 productive, please serve any objections and responses to the subpoenas by August 27. If you do not
 10 serve any objections and responses by August 27, we will consider any objections waived and
 11 understand that you intend to produce all documents and communications responsive to the
 12 subpoenas. Please also confirm by August 27 the following:

- 13 • The hit counts on the agreed-upon search terms, which you promised to provide
 14 weeks ago; and
- 15 • A date certain for when you will substantially complete production and a date certain
 16 for when you will complete production.

17 If you fail to provide us this information in advance of the meet and confer, or if you do not intend
 18 to serve all non-privileged documents responsive to the Shendure and Trapnell subpoenas by August
 19 30th, we will seek the appropriate relief.” *See id.* at 6–7. Mr. Epner did not respond to this email; he
 20 did not provide the promised hit counts; he did not provide a date certain for when he would
 21 substantially complete production in writing; and he did not provide a date certain for when he
 22 would complete production in writing. To date, neither Mr. Epner, Dr. Shendure, nor Dr. Trapnell
 23 has objected to the Subpoenas or the requests for documents contained therein.

24 39. On August 29, 2024, my colleague Cristen Corry, also from Sterne, Kessler,
 25 Goldstein & Fox P.L.L.C, and I met and conferred telephonically with Mr. Epner regarding the
 26 status of the production of Dr. Shendure’s and Dr. Trapnell’s documents and communications.
 27 During this telephonic conference, Mr. Epner informed us that we could expect rolling productions



1 to begin the week of September 16, 2024, and that the production of Dr. Shendure's and Dr.
 2 Trapnell's documents and communications would be substantially complete by September 20, 2024.
 3 See *id.* at 2. Based on Mr. Epner's representations and his promise to substantially complete
 4 document production by September 20, 2024, we adjourned the filing of the motion to compel
 5 mentioned in Mr. Gleason's August 23, 2024 email. See *id.* at 6–7.

6 40. On August 30, 2024, Ms. Corry emailed Mr. Epner memorializing the August 29,
 7 2024 meet and confer. Ms. Corry reiterated that “[i]t is our understanding that [Dr. Shendure and
 8 Dr. Trapnell] do not have any objections to the subject matter requests of the subpoenas.” Ms. Corry
 9 also asked Mr. Epner to “inform us immediately” if he foresaw any reason why he would “not
 10 substantially complete document production by the week of September 16th.” See *id.* at 2. Mr. Epner
 11 did not respond to Ms. Corry’s August 30, 2024 email, or otherwise inform us that: (i) Dr. Shendure
 12 or Dr. Trapnell had any objections to the subpoenas; or (ii) Mr. Epner foresaw any reason why he
 13 would not substantially complete document production by the week of September 16, 2024.

14 41. On September 11, 2024, having heard no response from Mr. Epner, Mr. Gleason
 15 emailed Mr. Epner, stating: “As indicated [in Ms. Corry’s August 30, 2024 email], we anticipate
 16 that you will substantially complete production of Dr. Shendure’s and Dr. Trapnell’s documents by
 17 September 20, 2024. If, for any reason, you are not on track to meet this deadline, please let us know
 18 by close of business September 12, 2024.” See *id.* at 1–2. Mr. Epner did not respond to Mr. Gleason’s
 19 September 11, 2024 email, or otherwise inform us that he foresaw any reason why he would not
 20 substantially complete document production by September 20, 2024.

21 42. Mr. Epner failed to produce any documents or communications responsive to the
 22 Subpoenas directed to Dr. Shendure or Dr. Trapnell by September 20, 2024. To date, neither
 23 Dr. Shendure nor Dr. Trapnell has produced a *single* document responsive to their respective
 24 Subpoenas, despite both agreeing to produce all documents and communications responsive thereto
 25 *without objection*. Mr. Epner did not seek an extension of the September 20, 2024 deadline to
 26 substantially complete production or otherwise inform us that he would not be able to meet this
 27 deadline.

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1 43. On October 4, 2024, having not heard from Mr. Epner since the August 29, 2024
2 meet and confer, Mr. Gleason emailed Mr. Epner a copy of the adjoining Motion to Compel, stating
3 “Attached is a motion to compel compliance with the Shendure and Trapnell subpoenas and request
4 for fees and costs that we intend to file on Monday, October 7. Despite our outreach, we have not
5 heard from you since our August 29, 2024 meet and confer, wherein you promised to produce all
6 documents responsive to the Shendure and Trapnell subpoenas, having waived any objections
7 thereto, by September 20, 2024. Two weeks later, we still have not received a *single* document from
8 you, despite our emails to you asking you to let us know if you would not be able to meet your own
9 deadline for production. Nor have you provided any reason for your failure to comply with these
10 subpoenas, which were served over *four months ago*. Parse cannot be prejudiced any longer. If you
11 fully comply with the required document production prior to any ruling by the court, we will
12 withdraw the motion to compel and consider withdrawing our request for fees.” *See id.* at 1.

13 44. As of the filing of this declaration and the adjoining motion to compel, Mr. Epner
14 has not responded to Mr. Gleason’s October 4, 2024 email.

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1 THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE,
2 SO STATED UNDER PENALTY OF PERJURY FOR THE STATE OF WASHINGTON AND
3 THE UNITED STATES OF AMERICA.

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5 DATED this 7th day of October, 2024

Respectfully submitted,

6 /s/ R. Wilson Powers III
7 R. Wilson Powers III, Ph.D.

8 **STERNE, KESSLER, GOLDSTEIN &**
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11 *Attorneys for Plaintiff Parse Biosciences, Inc.*

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CERTIFICATE OF SERVICE

The undersigned, Mark P. Walters, hereby certifies that a true and correct copy of this document was served by email on counsel for Dr. Jay Shendure and Dr. Bruce Colston Trapnell Jr. at the following email address: mepner@kudmanlaw.com

DATED this 7th day of October, 2024

/s/ Mark P. Walters

Mark Phillip Walters, WSBA # 30819

**POWERS DECL. IN SUPPORT OF PARSE'S MOTION
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